

(1994) 04 MAD CK 0076

In the Madras High Court

Case No : W.M.P. No. 3098 of 1993 in W. P. No. 1979 of 1993

Xavier

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 30-04-1994

Acts Referred:

Constitution of India, 1950 — Article 225
Contract Act, 1872 — Section 73

Citation : (1995) 1 ACC 175 : (1995) ACJ 7 : AIR 1994 Mad 306 : (1994) 1 LW 456 : (1994) WritLR 369

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : K. Chandran, for M/s. R. Yashood Vardhan and D. Duraj Rajan, for the Appellant; Veerabhadran, Government Advocate, C.S. Krishnamoorthy and K.V. Subramani, for the Respondent

Judgement

1. The prayer in the writ petition is to issue a writ of mandamus directing the respondents herein to pay a sum of Rs. 5,00,000/- as compensation to the petitioner for the death of his son.

2. The petitioner's only son by name Yesudas, who was blind by birth, was studying 6th standard at St. Louis Institute for the deaf and blind situated at Canal Bank Road, Adyar, Madras. On 10-10-1992, it seems at about 9.30p.m. the petitioner's son had a dinner at a nearby hotel with the petitioner herein, and they were walking in the footpath at Cathedral Road, as used by the petitioner, in week ends. There was light drizzling and the ground was wet. When the petitioner's son was passing by an electric pole which was not maintained properly, he was pulled into the electric field and fell down on the footpath and in the impact his left hand hit the open junction box touching an unprotected live wire and he was electrocuted instantly. This fact was brought to the notice of the Head Mistress of the Little Flower School for the blind situated near Gemini Flyover, Madras and she was a witness to the body of the petitioner's son, lying there near Cathedral Road electric pole number 71. A police enquiry was

conducted and the post mortem record shows that the boy died of electrocution. The petitioner alleges in the affidavit that indelible damage has been caused to the petitioner because of the negligence on the part of the respondents and the above incident brings home the extreme danger posted by inefficient maintenance of the electric poles by the respondents. The petitioner refers to various provisions of the Madras City Municipal Corporation Act, 1919 and also the Indian Electricity Act in the affidavit and alleges that as soon as the accident took place, a police enquiry has been conducted and. that the petitioner has informed the respondents 2 and 3 herein and that no reply has been received so far. The petitioner further alleges that the pole was not maintained in a proper condition, that no earthing has been done and that even after notice of the accident it continued in the same sorry state. It is also stated that there is leakage of electricity, it is alleged in the affidavit that the respondents are duty bound to maintain the electric poles properly more so since human lives are involved. It is also stated that if the junction box had been properly locked or sealed and if the earthing had been done correctly, the life of Yesudas would have been saved. At this stage, the petitioner has come up before this Court, asking for a compensation of Rs. 5,00,000/- as mentioned in the prayer, stated above, and the interim application for payment of Rs. 1,50,000/- pending writ petition.

3. The writ petition has been admitted on 2-2-1993 and notice has been issued in the miscellaneous petition. When the interim application came up for hearing, time was taken by the learned counsel for the respondents 2 and 3. This Court adjourned the matter thrice and in spite of it, no counter affidavit has been filed. In view of that, I do not think that there is any point in adjourning the matter further and this court has to take the allegations as such and pass orders in the interim application.

4. I have heard Mr. K. Chandru, the learned counsel for the petitioner, who relies upon the decision in Smt. Kumari Vs. State of Tamil Nadu and others, , where the Supreme Court has awarded a compensation of a sum of Rs. 50,000/- in a petition under Art. 225 of the Constitution of India. In fact, it was in appeal arising out of a case decided by this Court and the Supreme Court reversed the judgment and directed that a sum of Rs.50,000/- to be paid as compensation, by issuing a writ of mandamus. That was a case wherein the sewetage tank was not covered with a lid and was left open and a small boy died as a result of falling into the said tank.

5. Considering the facts and circumstances of the case on hand, I am fully satisfied that the death of the petitioners son has occurred due to the negligence on the part of the respondents, in not maintaining the electric poles efficiently and that it has caused the death of the young boy Yesudas. It seems that he is the only son of the petitioner and as such I am of the view that this is a fit case, wherein a direction is to issue to the second respondent herein, to pay to the petitioner a sum of Rs.50,000/- (rupees fifty thousand only) with interest at 12%

per annum from the date of entertaining the writ petition i.e. 2-2-1993 till the date of realisation as a palpative measure. The amount shall be paid in six weeks and it can be settled through the Secretary, State Legal and Advisory Board. This petition is ordered accordingly. No costs.

6. Order accordingly.